



JUVENILE JUSTICE COMMITTEE

MEETING PACKET

Wednesday, December 07, 2005

09:30-11:00 AM

214 Capitol



FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Juvenile Justice Committee

Faye B. Culp
Chair

Mitch Needelman
Vice Chair

Meeting Agenda

Wednesday, December 07, 2005

214 Capitol, 09:30 - 11:00 AM

- I. Opening remarks by Chair Culp**
- II. Roll call**
- III. Consideration of CS/HB 175—Drug Court Programs by Adams**
- IV. Presentation on the Department of Juvenile Justice's Staff Verification System by Linville Atkins, Attorney for the Department of Juvenile Justice.**
- V. Closing remarks by Chair Culp/Adjournment**

HOUSE JUVENILE JUSTICE COMMITTEE
TAB INDEX
12/07/05

TAB 1.....CS/HB 175—Drug Court Programs by Adams

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 175 CS
SPONSOR(S): Adams and others
TIED BILLS:

Drug Court Programs
IDEN./SIM. BILLS: SB 114, SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Cunningham	Kramer
2) Juvenile Justice Committee		White	White
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals. This bill modifies laws regarding drug court programs in dependency, criminal, and delinquency proceedings.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). This bill authorizes a court to order individuals involved in a dependency case to be evaluated for drug or alcohol problems, and allows the court, after a finding of dependency, to require an individual to participate in and comply with treatment-based drug court programs. Individuals may voluntarily enter drug court prior to a finding of dependency.

In adult criminal and juvenile delinquency courts, drug court programs have traditionally been structured as pretrial diversion programs. This bill authorizes a court to require post-adjudicatory and sentenced offenders to participate in and comply with treatment-based drug court programs. Individuals charged with crimes may voluntarily enter drug court prior to trial.

This bill also provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program conditions. For dependency drug court programs, the protocol of sanctions may include, and for all other drug court programs, the protocol of sanctions must include: (a) placement in a secure licensed clinical or jail-based treatment program; and (b) incarceration. Additionally, the bill specifies that secure detention for juveniles must be included in the protocol of sanctions for a juvenile's noncompliance with a delinquency pretrial drug court program. These provisions of the bill address recent case law holding that incarceration and secure detention may not be imposed for noncompliance with pretrial drug court programs as such sanctions are not authorized by current law.

The fiscal impact to state and local governments of this bill is unknown. The language of the bill is permissive (i.e. participation in drug court programs is at the counties' discretion). However, should a county elect to participate in such programs, an individual participating in the program will be subject to a coordinated strategy developed by a drug court team. The bill provides that the coordinated strategy may include a protocol of sanctions. If a county's program elects to include a protocol of sanctions in its coordinated strategy, the bill requires that the protocol of sanctions for treatment-based programs, other than those authorized by Chapter 39, include jail-based treatment, incarceration, and secure detention. This would require counties to expend funds and would therefore fall under the mandates provisions of Article VII, Section 18 of the Florida Constitution. However, as the bill deals with criminal laws, it appears to be exempt from this section. See Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 11/9/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes the court to order a substance abuse assessment and evaluation after a shelter petition or dependency petition has been filed for individuals involved in the case. This bill expands the scope of drug court programs beyond pretrial intervention programs to include dependency drug court, post-adjudicatory programs, and the monitoring of sentenced offenders. This bill provides for incarceration and secure detention of individuals subject to drug court who violate drug court terms and conditions.

Promote Personal Responsibility → This bill provides for court-ordered substance abuse evaluation and treatment and court-monitored compliance with such orders. Sanctions are authorized for individuals who do not comply with the court orders.

Empower Families → This bill increases court responsibilities in dependency court matters.

B. EFFECT OF PROPOSED CHANGES:

Proceedings Relating to Children

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.¹ CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly \$10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey revealed the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.
- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse or neglect cases.

In April 1999, the Department of Health and Human Services issued a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and its relationship to children in foster care. It stated that children in substance abuse households were more likely than

¹ "No Safe Haven: Children of Substance-Abusing Parent," January 1999.

others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

Drug Court System

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.² The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were “revolving back through the criminal justice system because of underlying problems of drug addiction.”³ The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.⁴

As of July 2004, 88 drug courts operated in 43 counties.⁵ There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.⁶

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism, and that drug courts are a cost-effective alternative to incarceration of drug offenders.⁷

Drug courts operate on a reward and punishment system. The reward for successful completion of the program is not only a better life, but also lowering of a criminal charge to a lesser offense, or even dismissal of the criminal charge. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction. Recently, two District Courts of Appeal have ruled that because there is no statutory authorization for the imposition of incarceration or secure detention upon violation of a drug court program, a drug court participant cannot be incarcerated or securely detained for violating the terms of a drug court program.⁸

Effect of the Bill

Dependency Proceedings

This bill expands existing legislative intent to encourage courts to use the drug court program model and to authorize courts to assess parents and children for substance abuse problems in every stage of the dependency process. This bill establishes the following goals for substance abuse treatment services in the dependency process:

- ensure the safety of children;
- prevent and remediate the consequence of substance abuse;
- expedite permanent placement; and
- support families in recovery.

This bill authorizes a dependency court, upon a showing of good cause, to order a child, or person who has custody or is requesting custody of the child, to submit to substance abuse assessment and evaluation. The assessment and evaluation must be made by a qualified professional, as defined by s. 397.311, F.S.⁹

² Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p.1

³ *Id.*

⁴ *Id.*

⁵ *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5

⁶ *Id.*

⁷ *Id.*

⁸ *Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004); *T.N. v. Portesey*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005).

⁹ Section 397.311(24), F.S., defines “qualified professional” to mean “a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in

After an adjudication of dependency, or finding of dependency where adjudication is withheld, the court may require the individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in treatment, including a treatment-based drug court program, is voluntary. The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program conditions. For dependency drug court programs, the protocol of sanctions may include as available options: (a) placement in a secure licensed clinical or jail-based treatment program; and (b) incarceration within the time limits established for contempt of court (six months).

Drug Court Programs

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date and use the threat of resetting the trial date, and possible conviction, as a means to encourage compliance with the program.

This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include individuals involved in dependency proceedings, sentenced offenders, and offenders in postadjudicatory programs.

This bill specifies that entry into any pretrial treatment-based drug court program is voluntary and that the coordinated strategy adopted by the county for its drug court program, which may include a protocol of sanctions, must be provided in writing to a participant before he or she agrees to enter into a pretrial treatment-based drug court program. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.¹⁰

This bill provides that counties may adopt a protocol of sanctions for noncompliance with drug court program conditions. For all drug court programs, other than dependency drug court programs, this protocol of sanctions must include as available options: (a) placement in a secure licensed clinical or jail-based treatment program; and (b) incarceration within the time limits established for contempt of court (six months). Additionally, the bill specifies that secure detention for juveniles under s. 985.216, F.S., (up to five days for a first offense and up to 15 days for a second offense) must be included in the protocol of available sanctions for a juvenile's noncompliance with a delinquency pretrial drug court program.¹¹

This bill provides that an individual who successfully completes a treatment-based drug court program, if otherwise eligible, may have his or her arrest record and nolo contendere plea expunged.

another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

¹⁰ Section 948.08, F.S. requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So.2d 543 (Fla. 4th DCA 2005), referenced this statute and held that where a chief judge's administrative order defining the parameters of the program stated that *participation* in the program was voluntary (rather than *entry*), a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result would have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention programs are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program.

¹¹ The bill's provision of permissible sanctions would have the effect of overturning the effect of the decisions in *Diaz* and *T.N. Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004) ; *T.N. v. Portesey*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005). Note that the *Diaz* court suggested that the Legislature make this change.

This bill requires, contingent upon an annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program.¹²

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his or her case transferred to a county other than that in which the charge arose if the drug court program agrees and specific conditions are met. The bill specifies that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

In regard to criminal felony pretrial intervention programs, this bill removes the provision allowing a court or state attorney to deny a defendant's admission to a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

Finally, the bill adds tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

C. SECTION DIRECTORY:

Section 1. This act is cited as the "Robert J. Koch Drug Court Intervention Act."

Section 2. Amends s. 39.001(4), F.S., adding legislative intent language regarding substance abuse treatment services in proceedings relating to children.

Section 3. Amends s. 39.407, F.S., providing that at any time after a shelter or dependency petition is filed, a court may order a child or a person who has or is requesting custody of a child to submit to substance abuse assessment and evaluation.

Section 4. Amends s. 39.507, F.S., providing that after an adjudication of dependency or finding of dependency where adjudication is withheld, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; providing that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; providing that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

Section 5. Amends s. 39.521(1)(b)1., F.S., providing that when a child is adjudicated dependent, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; providing that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; providing that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

Section 6. Amends s. 39.701(9)(d), F.S., providing that the court may modify a dependency case plan to require parental/custodian participation in a treatment-based drug court program.

Section 7. Amends s. 397.334, F.S., providing that entry into a pretrial treatment-based drug court program is voluntary; expanding the types of treatment-based drug court programs; providing a treatment-based drug court program coordinator within each judicial circuit; providing that a circuit's chief judge may appoint an advisory committee for the drug program.

Section 8. Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

Section 9. Amends s. 948.08, F.S., providing that while in a felony pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team; providing that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

Section 10. Amends s. 948.16, F.S., providing that while in a misdemeanor pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed

¹² These positions were established in prior budgets and are currently staffed and funded.

by a drug court team; providing that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

Section 11. Amends s. 985.306, F.S., expanding the list of crimes for which an offender is eligible for participation in a delinquency pretrial substance abuse education and treatment intervention program; providing that while in a delinquency pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team; providing that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

Section 12. Providing that the act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None – this bill does not affect a state revenue source.

2. Expenditures:

Indeterminate – see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None – this bill does not affect a local government revenue source.

2. Expenditures:

Indeterminate – the language in this bill is permissive and participation in a drug court program will be left to the counties' discretion. However, the bill authorizes a protocol of sanctions for individuals who fail to comply with drug court programs. The protocol of sanctions for programs other than those established in Chapter 39 (dependency proceedings) must include jail-based treatment programs, incarceration, and secure detention for noncompliance. These sanctions would result in a cost to the counties. There are no data available to estimate the number of individuals that would be sanctioned under this bill. It should be noted that pretrial intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pretrial intervention programs are generally perceived as providing a financial benefit to counties.

The Department of Juvenile Justice (Department) states that the bill would increase the number of youth eligible for secure detention. The Department estimates that of the 1,798 youths placed in drug court programs, 17 percent would violate, resulting in 306 youths eligible for placement in secure detention for up to five days. Of those 306 first-time violators, it is estimated that five percent would violate a second time, resulting in 15 youths eligible for placement in secure detention for up to 15 days. At current per diem rates for secure detention, this represents expenditures of approximately \$204,800 per year.¹³ Although pre-disposition costs for secure detention became a county responsibility on July 1, 2005,¹⁴ the Department states that the majority of juveniles placed in secure

¹³ 306 youths multiplied by five days multiplied by \$115 per day results in a total of \$175,950. Fifteen youth multiplied by 15 days multiplied by \$115 per day results in a total of \$28,875. \$175,950 plus \$28,875 results in a combined total of \$204,825.

¹⁴ Section 985.2155, F.S.

detention would be placed post-disposition.¹⁵ Thus, the Department would be responsible for the majority of the cost.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

D. FISCAL COMMENTS:

Department of Children and Family Services

In its analysis of this bill, the Department of Children and Family Services (DCF) states that they currently fund substance abuse treatment services for approximately 8,602 adults and 2,200 children involved in the drug court system. DCF notes that because the language of the bill is permissive (i.e. the bill does not *require* courts to order assessment and evaluations), it is difficult to anticipate a fiscal impact.

Office of State Courts Administrator

The Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there will not be a fiscal impact related to the provision that each judicial circuit, contingent upon appropriation, establish the position of drug court coordinator.

Under the implementation of Revision 7 to Article V of Florida's Constitution, the state is obligated to pay from state revenues certain case management costs which include "service referral, coordination, monitoring, and tracking for treatment-based drug court programs under s. 397.334."¹⁶ However, "costs associated with the application of therapeutic jurisprudence principles by the courts" are excluded from the mandated portion of these costs to be borne by the state.¹⁷ Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are "therapeutic," they do not appear to have a significant fiscal impact on the state.

Committee on Criminal Justice Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be "therapeutic", and therefore not paid by the state under s. 29.004(10), F.S. However, that section is only applicable to "case management services." Section 29.004(6), F.S., provides that the state will be responsible for "expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority." If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.¹⁸ If 70 percent of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is \$50.

¹⁵ The Department expects the majority of secure detention placements under the bill to be based upon a finding of contempt of court under s. 985.216, F.S., and as such, the secure detention placement would occur after the disposition of the contempt of court case.

¹⁶ Section 29.004(10)(d), F.S.

¹⁷ Section 29.004(10), F.S.

¹⁸ Trial Court Statistical Reference Guide, published by the Office of State Courts Administrator.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although counties are given the option of whether to fund drug courts, the bill allows the courts to impose sanctions on pre-trial intervention participants which involve incarceration in county jail, jail-based treatment programs and secure juvenile detention. Thus, the bill would appear to require counties to expend funds. While the Department of Juvenile Justice estimates a \$200,000 impact, data to estimate the amount of any jail bed impact are unavailable. In addition, pre-trial intervention programs are already authorized under current law and are designed to reduce jail populations and associated costs. So these programs are generally perceived as providing financial benefit to counties that outweigh the costs.

Article VII, Section 18 of the state constitution reads as follows: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance."

Subsection (d) provides for several exemptions to Section 18. Among them are criminal laws and laws having insignificant fiscal impact. Even if the potential costs of incarceration authorized by this bill exceeded an amount considered by the Legislature to constitute an insignificant fiscal impact, these provisions relate to the criminal law, specifically to sentencing and the implementation of criminal sanctions, and therefore are exempt from any requirements of Section 18 of Article VII of the Florida Constitution.

2. Other:

The amendments to s. 397.334, F.S. provide that the protocol of sanctions for treatment-based programs authorized in Chapter 39 (dependency proceedings) may include incarceration for noncompliance with the program rules within the time limits established for contempt of court. Thus, an individual participating in a treatment-based drug court program as part of a dependency proceeding may be incarcerated for failing to comply with the program's terms and conditions. As written, this bill authorizes a court to impose a criminal punishment (incarceration) in a civil proceeding (dependency proceedings are civil proceedings). Although incarceration can be used in civil proceedings as a sanction for criminal and civil contempt, this bill does not specify that incarceration would be the result of contempt proceedings (only that the incarceration may not exceed the time limits established for contempt of court). This could result in a constitutional challenge.

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although some of the persons who administer assessments may qualify as psychotherapists for purposes of the psychotherapist and

patient privilege¹⁹, the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.²⁰

Section 7 of this bill provides that offenders who are "postadjudicatory" may be referred to drug court for assessment and treatment of addictions. The ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In several of the bill's provisions, it is provided that counties *may* adopt a protocol of sanctions for noncompliance with drug court programs; however, in several other provisions, the bill provides that the protocol *must* include specified sanctions. For consistency, it may be desirable to amend the latter provisions so that they specify that the protocol *may* include specified sanctions.

The bill provides that the drug court protocols may or must "include" specified sanctions. Given the use of the term "include," it does not appear that the bill intends for the specified sanctions to be the exclusive sanctions that a county may adopt. For clarification, it may be desirable to amend the bill to specify that the protocols, "may include, but are not limited to" the specified sanctions.

In several provisions, the bill provides that a permissible sanction for noncompliance with a drug court program is placement in a "secure licensed clinical program." This term is not defined in statute. Thus, it may be desirable to amend the bill to define the program.

The bill amends s. 985.306, F.S., to provide that a juvenile may be securely detained under s. 985.216, F.S., the juvenile contempt of court statute, for noncompliance with a drug court program under s. 397.334, F.S. In this latter section of law, the bill refers to authorized sanctions for noncompliance with drug court programs, e.g., secure licensed clinical or jail-based treatment programs or incarceration, but fails to cross-reference the authorization for secure detention in s. 985.306, F.S. It may be desirable to amend s. 397.334, F.S., to contain this cross-reference.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted one amendment to the bill. As filed, the bill provides that individuals participating in treatment-based drug court programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The bill also provides that individuals participating in pretrial intervention programs, misdemeanor pretrial substance abuse education and treatment intervention programs, and delinquency pretrial intervention programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The first amendment adopted by the committee made the language of these provisions more permissive by providing that the coordinated strategy *may* include a protocol of sanctions. The first amendment also deletes a provision allowing state attorneys to deny a defendant's admission into a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

¹⁹ Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will; Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970); A person's prior substance abuse treatment as part of a plea agreement did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868 (Fla. 4th DCA 2002).

²⁰ Section 90.503(4)(b), F.S.

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CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to drug court programs; providing a short title; amending s. 39.001, F.S.; providing additional legislative purposes and intent with respect to the treatment of substance abuse, including the use of the drug court program model; authorizing the court to require certain persons to undergo treatment following adjudication; amending s. 39.407, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment upon a showing of good cause in connection with a shelter petition or petition for dependency; amending ss. 39.507 and 39.521, F.S.; authorizing the court to order specified persons to submit to a substance abuse assessment as part of an adjudicatory order or pursuant to a disposition hearing; requiring a showing of good cause; authorizing the court to require participation in a treatment-based drug court program; authorizing the court to impose sanctions for noncompliance; amending s. 39.701, F.S.; authorizing the

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24 | court to extend the time for completing a case plan during
25 | judicial review, based upon participation in a treatment-
26 | based drug court program; amending s. 397.334, F.S.;
27 | revising legislative intent with respect to treatment-
28 | based drug court programs to reflect participation by
29 | community support agencies, the Department of Education,
30 | and other individuals; including postadjudicatory programs
31 | as part of treatment-based drug court programs; providing
32 | requirements and sanctions, including clinical placement
33 | or incarceration, for the coordinated strategy developed
34 | by the drug court team to encourage participant
35 | compliance; requiring each judicial circuit to establish a
36 | position for a coordinator of the treatment-based drug
37 | court program, subject to annual appropriation by the
38 | Legislature; authorizing the chief judge of each judicial
39 | circuit to appoint an advisory committee for the
40 | treatment-based drug court program; providing for
41 | membership of the committee; revising language with
42 | respect to an annual report; amending s. 910.035, F.S.;
43 | revising language with respect to conditions for the
44 | transfer of a case in the drug court treatment program to
45 | a county other than that in which the charge arose;
46 | amending ss. 948.08, 948.16, and 985.306, F.S., relating
47 | to felony, misdemeanor, and delinquency pretrial substance
48 | abuse education and treatment intervention programs;
49 | deleting a provision allowing a state attorney to deny a
50 | defendant's admission to a pretrial substance abuse
51 | education and treatment intervention program if the

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defendant previously declined admission to such a program;
providing for application of the coordinated strategy
developed by the drug court team; removing provisions
authorizing appointment of an advisory committee, to
conform to changes made by the act; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Robert J. Koch
Drug Court Intervention Act."

Section 2. Subsection (4) of section 39.001, Florida
Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and
screening.--

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and
comprehensive treatment can help combat substance abuse in
families and that treatment is cost effective.

(b) The Legislature establishes the following goals for
the state related to substance abuse treatment services in the
dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance
abuse on families involved in protective supervision or foster
care and reduce substance abuse, including alcohol abuse, for
families who are at risk of being involved in protective
supervision or foster care.

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80 3. To expedite permanency for children and reunify
81 healthy, intact families, when appropriate.

82 4. To support families in recovery.

83 (c) The Legislature finds that children in the care of the
84 state's dependency system need appropriate health care services,
85 that the impact of substance abuse on health indicates the need
86 for health care services to include substance abuse services to
87 children and parents where appropriate, and that it is in the
88 state's best interest that such children be provided the
89 services they need to enable them to become and remain
90 independent of state care. In order to provide these services,
91 the state's dependency system must have the ability to identify
92 and provide appropriate intervention and treatment for children
93 with personal or family-related substance abuse problems.

94 (d) It is the intent of the Legislature to encourage the
95 use of the drug court program model established by s. 397.334
96 and authorize courts to assess parents and children where good
97 cause is shown to identify and address substance abuse problems
98 as the court deems appropriate at every stage of the dependency
99 process. Participation in treatment, including a treatment-based
100 drug court program, may be required by the court following
101 adjudication. Participation in assessment and treatment prior to
102 adjudication shall be voluntary, except as provided in s.
103 39.407(16).

104 (e) It is therefore the purpose of the Legislature to
105 provide authority for the state to contract with community
106 substance abuse treatment providers for the development and
107 operation of specialized support and overlay services for the

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dependency system, which will be fully implemented and used
utilized as resources permit.

(f) Participation in the treatment-based drug court
program does not divest any public or private agency of its
responsibility for a child or adult, but is intended to enable
these agencies to better meet their needs through shared
responsibility and resources.

Section 3. Subsection (15) of section 39.407, Florida
Statutes, is amended, and subsection (16) is added to that
section, to read:

39.407 Medical, psychiatric, and psychological examination
and treatment of child; physical, ~~or~~ mental, or substance abuse
examination of ~~parent or~~ person with or requesting child custody
~~of child.~~ --

(15) At any time after the filing of a shelter petition or
petition for dependency, when the mental or physical condition,
including the blood group, of a parent, caregiver, legal
custodian, or other person who has custody or is requesting
custody of a child is in controversy, the court may order the
person to submit to a physical or mental examination by a
qualified professional. The order may be made only upon good
cause shown and pursuant to notice and procedures as set forth
by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for
dependency is filed, the court may order a child or a person who
has custody or is requesting custody of the child to submit to a
substance abuse assessment and evaluation. The assessment and
evaluation must be administered by a qualified professional, as

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136 defined in s. 397.311. The order may be made only upon good
137 cause shown. This subsection shall not be construed to authorize
138 placement of a child with a person seeking custody, other than
139 the parent or legal custodian, who requires substance abuse
140 treatment.

141 Section 4. Subsection (9) is added to section 39.507,
142 Florida Statutes, to read:

143 39.507 Adjudicatory hearings; orders of adjudication.--

144 (9) After an adjudication of dependency, or a finding of
145 dependency where adjudication is withheld, the court may order a
146 child or a person who has custody or is requesting custody of
147 the child to submit to a substance abuse assessment or
148 evaluation. The assessment or evaluation must be administered by
149 a qualified professional, as defined in s. 397.311. The court
150 may also require such person to participate in and comply with
151 treatment and services identified as necessary, including, when
152 appropriate and available, participation in and compliance with
153 a treatment-based drug court program established under s.
154 397.334. In addition to supervision by the department, the
155 court, including the treatment-based drug court program, may
156 oversee the progress and compliance with treatment by the child
157 or a person who has custody or is requesting custody of the
158 child. The court may impose appropriate available sanctions for
159 noncompliance upon the child or a person who has custody or is
160 requesting custody of the child or make a finding of
161 noncompliance for consideration in determining whether an
162 alternative placement of the child is in the child's best
163 interests. Any order entered under this subsection may be made

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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164 only upon good cause shown. This subsection shall not be
165 construed to authorize placement of a child with a person
166 seeking custody, other than the parent or legal custodian, who
167 requires substance abuse treatment.

168 Section 5. Paragraph (b) of subsection (1) of section
169 39.521, Florida Statutes, is amended to read:

170 39.521 Disposition hearings; powers of disposition.--

171 (1) A disposition hearing shall be conducted by the court,
172 if the court finds that the facts alleged in the petition for
173 dependency were proven in the adjudicatory hearing, or if the
174 parents or legal custodians have consented to the finding of
175 dependency or admitted the allegations in the petition, have
176 failed to appear for the arraignment hearing after proper
177 notice, or have not been located despite a diligent search
178 having been conducted.

179 (b) When any child is adjudicated by a court to be
180 dependent, the court having jurisdiction of the child has the
181 power by order to:

182 1. Require the parent and, when appropriate, the legal
183 custodian and the child, to participate in treatment and
184 services identified as necessary. The court may require the
185 child or the person who has custody or who is requesting custody
186 of the child to submit to a substance abuse assessment or
187 evaluation. The assessment or evaluation must be administered by
188 a qualified professional, as defined in s. 397.311. The court
189 may also require such person to participate in and comply with
190 treatment and services identified as necessary, including, when
191 appropriate and available, participation in and compliance with

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CODING: Words stricken are deletions; words underlined are additions.

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192 a treatment-based drug court program established under s.
193 397.334. In addition to supervision by the department, the
194 court, including the treatment-based drug court program, may
195 oversee the progress and compliance with treatment by the child
196 or a person who has custody or is requesting custody of the
197 child. The court may impose appropriate available sanctions for
198 noncompliance upon the child or a person who has custody or is
199 requesting custody of the child or make a finding of
200 noncompliance for consideration in determining whether an
201 alternative placement of the child is in the child's best
202 interests. Any order entered under this subparagraph may be made
203 only upon good cause shown. This subparagraph shall not be
204 construed to authorize placement of a child with a person
205 seeking custody of the child, other than the child's parent or
206 legal custodian, who requires substance abuse treatment.

207 2. Require, if the court deems necessary, the parties to
208 participate in dependency mediation.

209 3. Require placement of the child either under the
210 protective supervision of an authorized agent of the department
211 in the home of one or both of the child's parents or in the home
212 of a relative of the child or another adult approved by the
213 court, or in the custody of the department. Protective
214 supervision continues until the court terminates it or until the
215 child reaches the age of 18, whichever date is first. Protective
216 supervision shall be terminated by the court whenever the court
217 determines that permanency has been achieved for the child,
218 whether with a parent, another relative, or a legal custodian,
219 and that protective supervision is no longer needed. The

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220 termination of supervision may be with or without retaining
221 jurisdiction, at the court's discretion, and shall in either
222 case be considered a permanency option for the child. The order
223 terminating supervision by the department shall set forth the
224 powers of the custodian of the child and shall include the
225 powers ordinarily granted to a guardian of the person of a minor
226 unless otherwise specified. Upon the court's termination of
227 supervision by the department, no further judicial reviews are
228 required, so long as permanency has been established for the
229 child.

230 Section 6. Paragraph (d) of subsection (9) of section
231 39.701, Florida Statutes, is amended to read:

232 39.701 Judicial review.--

233 (9)

234 (d) The court may extend the time limitation of the case
235 plan, or may modify the terms of the plan, which, in addition to
236 other modifications, may include a requirement that the parent
237 or legal custodian participate in a treatment-based drug court
238 program established under s. 397.334, based upon information
239 provided by the social service agency, and the guardian ad
240 litem, if one has been appointed, the parent or parents, and the
241 foster parents or legal custodian, and any other competent
242 information on record demonstrating the need for the amendment.
243 If the court extends the time limitation of the case plan, the
244 court must make specific findings concerning the frequency of
245 past parent-child visitation, if any, and the court may
246 authorize the expansion or restriction of future visitation.
247 Modifications to the plan must be handled as prescribed in s.

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39.601. Any extension of a case plan must comply with the time requirements and other requirements specified by this chapter.

Section 7. Section 397.334, Florida Statutes, is amended to read:

397.334 Treatment-based drug court programs.--

(1) Each county may fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services plans tailored to the individual needs of the participant. It is the intent of the Legislature to encourage the Department of Corrections, the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and such ~~other~~ agencies, local governments, law enforcement agencies, ~~and~~ other interested public or private sources, and individuals to support the creation and establishment of these problem-solving court programs. Participation in the treatment-based drug court programs does not divest any public or private agency of its responsibility for a child or adult, but enables ~~allows~~ these agencies to better meet their needs through shared responsibility and resources.

(2) Entry into any pretrial treatment-based drug court program shall be voluntary. The court may only order an individual to enter into a pretrial treatment-based drug court program upon written agreement by the individual, which shall include a statement that the individual understands the

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276 requirements of the program and the potential sanctions for
277 noncompliance.

278 (3)(2) The treatment-based drug court programs shall
279 include therapeutic jurisprudence principles and adhere to the
280 following 10 key components, recognized by the Drug Courts
281 Program Office of the Office of Justice Programs of the United
282 States Department of Justice and adopted by the Florida Supreme
283 Court Treatment-Based Drug Court Steering Committee:

284 (a) Drug court programs integrate alcohol and other drug
285 treatment services with justice system case processing.

286 (b) Using a nonadversarial approach, prosecution and
287 defense counsel promote public safety while protecting
288 participants' due process rights.

289 (c) Eligible participants are identified early and
290 promptly placed in the drug court program.

291 (d) Drug court programs provide access to a continuum of
292 alcohol, drug, and other related treatment and rehabilitation
293 services.

294 (e) Abstinence is monitored by frequent testing for
295 alcohol and other drugs.

296 (f) A coordinated strategy governs drug court program
297 responses to participants' compliance.

298 (g) Ongoing judicial interaction with each drug court
299 program participant is essential.

300 (h) Monitoring and evaluation measure the achievement of
301 program goals and gauge program effectiveness.

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(i) Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.

(j) Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

~~(4)(3)~~ Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.306, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs, and the monitoring of sentenced offenders through a treatment-based drug court program. While enrolled in any treatment-based drug court program, the participant is subject to a coordinated strategy developed by the drug court team under paragraph (3)(f). Each coordinated strategy may include a protocol of sanctions that may be imposed upon the participant. The protocol of sanctions for treatment-based programs other than those authorized in chapter 39 must include, and the protocol of sanctions for treatment-based drug court programs authorized in chapter 39 may include, as available options placement in a secure licensed clinical or jail-based treatment program or serving a period of incarceration for noncompliance with program rules within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and

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330 plea of nolo contendere to the dismissed charges expunged under
331 s. 943.0585.

332 (5) Contingent upon an annual appropriation by the
333 Legislature, each judicial circuit shall establish, at a
334 minimum, one coordinator position for the treatment-based drug
335 court program within the state courts system to coordinate the
336 responsibilities of the participating agencies and service
337 providers. Each coordinator shall provide direct support to the
338 treatment-based drug court program by providing coordination
339 between the multidisciplinary team and the judiciary, providing
340 case management, monitoring compliance of the participants in
341 the treatment-based drug court program with court requirements,
342 and providing program evaluation and accountability.

343 (6)-(4)(a) The Florida Association of Drug Court ~~Program~~
344 Professionals is created. The membership of the association may
345 consist of treatment-based drug court program practitioners who
346 comprise the multidisciplinary treatment-based drug court
347 program team, including, but not limited to, judges, state
348 attorneys, defense counsel, treatment-based drug court program
349 coordinators, probation officers, law enforcement officers,
350 community representatives, members of the academic community,
351 and treatment professionals. Membership in the association shall
352 be voluntary.

353 (b) The association shall annually elect a chair whose
354 duty is to solicit recommendations from members on issues
355 relating to the expansion, operation, and institutionalization
356 of treatment-based drug court programs. The chair is responsible
357 for providing on or before October 1 of each year the

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association's recommendations and an annual report to the
appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~
committee or to the appropriate personnel of the Office of the
State Courts Administrator, and shall submit a report each year,
~~on or before October 1, to the steering committee.~~

~~(7)(5)~~ If a county chooses to fund a treatment-based drug
court program, the county must secure funding from sources other
than the state for those costs not otherwise assumed by the
state pursuant to s. 29.004. However, this does not preclude
counties from using treatment and other service dollars provided
through state executive branch agencies. Counties may provide,
by interlocal agreement, for the collective funding of these
programs.

(8) The chief judge of each judicial circuit may appoint
an advisory committee for the treatment-based drug court
program. The committee shall be composed of the chief judge, or
his or her designee, who shall serve as chair; the judge of the
treatment-based drug court program, if not otherwise designated
by the chief judge as his or her designee; the state attorney,
or his or her designee; the public defender, or his or her
designee; the treatment-based drug court program coordinators;
community representatives; treatment representatives; and any
other persons the chair finds are appropriate.

Section 8. Paragraphs (b) and (e) of subsection (5) of
section 910.035, Florida Statutes, are amended to read:

910.035 Transfer from county for plea and sentence.--

(5) Any person eligible for participation in a drug court
treatment program pursuant to s. 948.08(6) may be eligible to

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have the case transferred to a county other than that in which the charge arose if the drug court program agrees and if the following conditions are met:

(b) If approval for transfer is received from all parties, the trial court shall accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court program.

(e) Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred shall dispose of the case pursuant to s. 948.08(6). If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred shall dispose of the case within the guidelines of the Criminal Punishment Code ~~case shall be prosecuted as determined by the state attorneys of the sending and receiving counties.~~

Section 9. Subsections (6), (7), and (8) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.--

(6)(a) Notwithstanding any provision of this section, a person who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud; who has not been charged with a crime involving violence, including, but not limited to, murder, sexual battery, robbery, carjacking, home-invasion robbery, or any other crime involving violence; and who has not

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previously been convicted of a felony nor been admitted to a felony pretrial program referred to in this section is eligible for voluntary admission into a pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period of not less than 1 year in duration, upon motion of either party or the court's own motion, except:

~~1. If a defendant was previously offered admission to a pretrial substance abuse education and treatment intervention program at any time prior to trial and the defendant rejected that offer on the record, then the court or the state attorney may deny the defendant's admission to such a program.~~

2. if the state attorney believes that the facts and circumstances of the case suggest the defendant's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the dealing or selling of controlled substances, the court shall deny the defendant's admission into a pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant. The protocol of sanctions must include as available options placement in a secure licensed clinical or jail-based treatment program or

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442 serving a period of incarceration for noncompliance with program
 443 rules within the time limits established for contempt of court.
 444 The coordinated strategy must be provided in writing to the
 445 participant before the participant agrees to enter into a
 446 pretrial treatment-based drug court program, or other pretrial
 447 intervention program.

448 ~~(c)(b)~~ At the end of the pretrial intervention period, the
 449 court shall consider the recommendation of the administrator
 450 pursuant to subsection (5) and the recommendation of the state
 451 attorney as to disposition of the pending charges. The court
 452 shall determine, by written finding, whether the defendant has
 453 successfully completed the pretrial intervention program.

454 ~~(e)1.~~ If the court finds that the defendant has not
 455 successfully completed the pretrial intervention program, the
 456 court may order the person to continue in education and
 457 treatment, which may include secure licensed clinical or jail-
 458 based treatment programs, or order that the charges revert to
 459 normal channels for prosecution.

460 ~~2.~~ The court shall dismiss the charges upon a finding that
 461 the defendant has successfully completed the pretrial
 462 intervention program.

463 (d) Any entity, whether public or private, providing a
 464 pretrial substance abuse education and treatment intervention
 465 program under this subsection must contract with the county or
 466 appropriate governmental entity, and the terms of the contract
 467 must include, but need not be limited to, the requirements
 468 established for private entities under s. 948.15(3).

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~~(7) The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program composed of the chief judge or his or her designee, who shall serve as chair; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair deems appropriate. The advisory committee may not designate any defendant eligible for a pretrial intervention program for any offense that is not listed under paragraph (6) (a) without the state attorney's recommendation and approval. The committee may also include persons representing any other agencies to which persons released to the pretrial intervention program may be referred.~~

~~(7)(8)~~ The department may contract for the services and facilities necessary to operate pretrial intervention programs.

Section 10. Section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(1) (a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own

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497 motion, except, if the state attorney believes the facts and
498 circumstances of the case suggest the defendant is involved in
499 dealing and selling controlled substances, the court shall hold
500 a preadmission hearing. If the state attorney establishes, by a
501 preponderance of the evidence at such hearing, that the
502 defendant was involved in dealing or selling controlled
503 substances, the court shall deny the defendant's admission into
504 the pretrial intervention program.

505 (b) While enrolled in a pretrial intervention program
506 authorized by this section, the participant is subject to a
507 coordinated strategy developed by a drug court team under s.
508 397.334(3). The coordinated strategy may include a protocol of
509 sanctions that may be imposed upon the participant. The protocol
510 of sanctions must include as available options placement in a
511 secure licensed clinical or jail-based treatment program or
512 serving a period of incarceration for noncompliance with program
513 rules within the time limits established for contempt of court.
514 The coordinated strategy must be provided in writing to the
515 participant before the participant agrees to enter into a
516 pretrial treatment-based drug court program, or other pretrial
517 intervention program.

518 (2) At the end of the pretrial intervention period, the
519 court shall consider the recommendation of the treatment program
520 and the recommendation of the state attorney as to disposition
521 of the pending charges. The court shall determine, by written
522 finding, whether the defendant successfully completed the
523 pretrial intervention program.

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~~(a)~~ If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.

~~(b)~~ The court shall dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

(3) Any public or private entity providing a pretrial substance abuse education and treatment program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3).

Section 11. Section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.--

(1)~~(a)~~ Notwithstanding any provision of law to the contrary, a child who is charged ~~under chapter 893~~ with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence; solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony ~~nor been admitted to a delinquency pretrial intervention program under this section~~, is eligible for voluntary admission into a delinquency pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s.

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397.334, approved by the chief judge or alternative sanctions coordinator of the circuit to the extent that funded programs are available, for a period based on the program requirements and the treatment services that are suitable for the offender ~~of not less than 1 year in duration~~, upon motion of either party or the court's own motion. However, if the state attorney believes that the facts and circumstances of the case suggest the child's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence at such hearing that the child was involved in the dealing and selling of controlled substances, the court shall deny the child's admission into a delinquency pretrial intervention program.

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the child. The protocol of sanctions must include as available options placement in a secure licensed clinical facility or placement in a secure detention facility under s. 985.216 for noncompliance with program rules. The coordinated strategy must be provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program, or other pretrial intervention program.

~~(3)(b)~~ At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the

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pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program.

~~(e)1.~~ If the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or urine monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution.

2-. The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

(4)~~(d)~~ Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, and a urine monitoring program under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

~~(2) The chief judge in each circuit may appoint an advisory committee for the delinquency pretrial intervention program composed of the chief judge or designee, who shall serve as chair, the state attorney, the public defender, and the program administrator, or their designees, and such other~~

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608 | ~~persons as the chair deems appropriate. The committee may also~~
 609 | ~~include persons representing any other agencies to which~~
 610 | ~~children released to the delinquency pretrial intervention~~
 611 | ~~program may be referred.~~

612 | Section 12. This act shall take effect upon becoming a
 613 | law.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **CS for HB 175**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Juvenile Justice Committee
Representative Adams offered the following:

Amendment (with title amendment)

Remove lines 317-324 and insert:

may be imposed upon the participant for noncompliance with
program rules. The protocol of sanctions for treatment-based
drug court programs may include, but is not limited to,
placement in a substance abuse treatment program offered by a
licensed service provider as defined in s. 397.311 or in a jail-
based treatment program, or serving a period of secure detention
under chapter 985 if a child or a period of incarceration within
the time limits established for contempt of court if an adult.
The coordinated

===== T I T L E A M E N D M E N T =====

Remove line 32 and insert:

requirements and sanctions, including treatment by specified
licensed service providers, jail-based treatment, secure
detention,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **CS for HB 175**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Juvenile Justice Committee
2 Representative Adams offered the following:

3
4 **Amendment**

5 Remove lines 439-573 and insert:
6 sanctions that may be imposed upon the participant for
7 noncompliance with program rules. The protocol of sanctions may
8 include, but is not limited to, placement in a substance abuse
9 treatment program offered by a licensed service provider as
10 defined in s. 397.311 or in a jail-based treatment program, or
11 serving a period of incarceration within the time limits
12 established for contempt of court. The coordinated strategy must
13 be provided in writing to the participant before the participant
14 agrees to enter into a pretrial treatment-based drug court
15 program, or other pretrial intervention program.

16 (c)(b) At the end of the pretrial intervention period, the
17 court shall consider the recommendation of the administrator
18 pursuant to subsection (5) and the recommendation of the state
19 attorney as to disposition of the pending charges. The court
20 shall determine, by written finding, whether the defendant has
21 successfully completed the pretrial intervention program.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

22 ~~(e)1.~~ If the court finds that the defendant has not
23 successfully completed the pretrial intervention program, the
24 court may order the person to continue in education and
25 treatment, which may include substance abuse treatment programs
26 offered by licensed service providers as defined in s. 397.311
27 or jail-based treatment programs, or order that the charges
28 revert to normal channels for prosecution.

29 ~~2.~~ The court shall dismiss the charges upon a finding that
30 the defendant has successfully completed the pretrial
31 intervention program.

32 (d) Any entity, whether public or private, providing a
33 pretrial substance abuse education and treatment intervention
34 program under this subsection must contract with the county or
35 appropriate governmental entity, and the terms of the contract
36 must include, but need not be limited to, the requirements
37 established for private entities under s. 948.15(3).

38 ~~(7) The chief judge in each circuit may appoint an~~
39 ~~advisory committee for the pretrial intervention program~~
40 ~~composed of the chief judge or his or her designee, who shall~~
41 ~~serve as chair; the state attorney, the public defender, and the~~
42 ~~program administrator, or their designees; and such other~~
43 ~~persons as the chair deems appropriate. The advisory committee~~
44 ~~may not designate any defendant eligible for a pretrial~~
45 ~~intervention program for any offense that is not listed under~~
46 ~~paragraph (6)(a) without the state attorney's recommendation and~~
47 ~~approval. The committee may also include persons representing~~
48 ~~any other agencies to which persons released to the pretrial~~
49 ~~intervention program may be referred.~~

50 ~~(7)(8)~~ The department may contract for the services and
51 facilities necessary to operate pretrial intervention programs.

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Section 10. Section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(1)(a) A person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under chapter 893, and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion, except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(3). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program, or

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83 serving a period of incarceration within the time limits
84 established for contempt of court. The coordinated strategy must
85 be provided in writing to the participant before the participant
86 agrees to enter into a pretrial treatment-based drug court
87 program, or other pretrial intervention program.

88 (2) At the end of the pretrial intervention period, the
89 court shall consider the recommendation of the treatment program
90 and the recommendation of the state attorney as to disposition
91 of the pending charges. The court shall determine, by written
92 finding, whether the defendant successfully completed the
93 pretrial intervention program.

94 ~~(a)~~ If the court finds that the defendant has not
95 successfully completed the pretrial intervention program, the
96 court may order the person to continue in education and
97 treatment or return the charges to the criminal docket for
98 prosecution.

99 ~~(b)~~ The court shall dismiss the charges upon finding that
100 the defendant has successfully completed the pretrial
101 intervention program.

102 (3) Any public or private entity providing a pretrial
103 substance abuse education and treatment program under this
104 section shall contract with the county or appropriate
105 governmental entity. The terms of the contract shall include,
106 but not be limited to, the requirements established for private
107 entities under s. 948.15(3).

108 Section 11. Section 985.306, Florida Statutes, is amended
109 to read:

110 985.306 Delinquency pretrial intervention program.--

111 (1)~~(a)~~ Notwithstanding any provision of law to the
112 contrary, a child who is charged ~~under chapter 893~~ with a felony
113 of the second or third degree for purchase or possession of a

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114 controlled substance under chapter 893; tampering with evidence;
115 solicitation for purchase of a controlled substance; or
116 obtaining a prescription by fraud, and who has not previously
117 been adjudicated for a felony ~~nor been admitted to a delinquency~~
118 ~~pretrial intervention program under this section,~~ is eligible
119 for voluntary admission into a delinquency pretrial substance
120 abuse education and treatment intervention program, including a
121 treatment-based drug court program established pursuant to s.
122 397.334, approved by the chief judge or alternative sanctions
123 coordinator of the circuit to the extent that funded programs
124 are available, for a period based on the program requirements
125 and the treatment services that are suitable for the offender ~~of~~
126 ~~not less than 1 year in duration,~~ upon motion of either party or
127 the court's own motion. However, if the state attorney believes
128 that the facts and circumstances of the case suggest the child's
129 involvement in the dealing and selling of controlled substances,
130 the court shall hold a preadmission hearing. If the state
131 attorney establishes by a preponderance of the evidence at such
132 hearing that the child was involved in the dealing and selling
133 of controlled substances, the court shall deny the child's
134 admission into a delinquency pretrial intervention program.

135 (2) While enrolled in a delinquency pretrial intervention
136 program authorized by this section, a child is subject to a
137 coordinated strategy developed by a drug court team under s.
138 397.334(3). The coordinated strategy may include a protocol of
139 sanctions that may be imposed upon the child for noncompliance
140 with program rules. The protocol of sanctions may include, but
141 is not limited to, placement in a substance abuse treatment
142 program offered by a licensed service provider as defined in s.
143 397.311 or serving a period of secure detention under this
144 chapter. The coordinated strategy must be provided in